have undergone instruction for 6 months in the chambers of a practitioner. Sub-section (2) further requires that notices of the petition shall be posted for a statutory period of 6 months. Both these conditions must be relaxed if this application were to succeed. The court is given discretion to do so by the express provisions of sub-section (5) which reads as follows:

"(5) The court may, on application and on special grounds, one of which may be that the petitioner has been engaged in any part of Her Majesty's dominions in the active practice of his profession after having qualified as a Barrister of England or Northern Ireland (or of Ireland if called before the first day of October, 1921) or as a member of the Faculty of Advocates in Scotland or a solicitor of the Supreme Court of Judicature of England or Northern Ireland (or of Ireland admitted before the first day of October, 1921), or Writer to the Signet or a solicitor in the Colony, to be stated on affidavit or statutory declaration to be filed in court seven clear days before the same is used, by order shorten the period during which the notice referred to in sub-section (2) of this section is required to be posted and may by order shorten or dispense with the period during which the petitioner is required to attend and receive instruction in law in an office or to read in chambers, and may, if it thinks fit, admit and control the petitioner at any time."

The question before me is whether or not I should exercise my discretion under this sub-section. The conditions imposed by section 7(1)(a) and section 8 have both been satisfied. Mr. Foot's eminence at the Bar is too well known for me to pause and hesitate over dispensing *in toto* with the statutorily required period of reading in chambers. It only remains to consider whether the statutory six months' notice under sub-section (2) may properly be shortened by nearly 3 months. The last posting of the notice was on May 5, 1964. One of the "special grounds", as specified in sub-section (5), has clearly been shown in this case. Should I on a question in which I am left a certain measure of discretion withhold the exercise of such discretion merely because the notice should have 79 days more to run?

The case for which Mr. Foot has been retained is stated by him in his affidavit to be one of great public importance involving issues on the interpretation of statutes, the power of the court to grant declarations, the provisions of the Constitution and trade union law, in all of which he has had long experience. I have heard no argument to the contrary nor can I anticipate what may occur or arise at the trial. In this respect, therefore, there would appear to be somewhat exceptional circumstances for the plaintiffs being allowed counsel of their choice. There is, in addition to the fact that Mr. Foot has been in active practice in various Commonwealth countries, this further fact that he had been regularly engaged in the Judicial Committee of the Privy Council since 1945 and that he had been called to the Bar or admitted as a solicitor or practitioner in countries as far-flung as Ghana, Ceylon, Northern Rhodesia, Sierra Leone, India (13 years after India became independent) and Bahrain and he had also regularly appeared in the courts of Kenya, Uganda, Tanganyika, Nyasaland and Pakistan. It may be added that Mr. Foot had appeared in the Privy Council for many years in connection with appeals from Malaya, both civil and criminal. I think I should be affecting an unduly tender regard for imaginary and fanciful risks to which I may expose public interest were I to state that I feel myself unable to anticipate by 79 days the allowing of an application which I should be bound to allow on November 6, 1964.

I might mention, in conclusion, that if it is feared that this case should prove an unfortunate precedent opening the floodgates to all sorts of would-be legal practitioners from various parts of the Commonwealth knocking at our doors, the remedy is readily to hand by proper amendments of the Ordinance.

I would allow the application and make the order prayed for.

Application for admission granted.

SOH TEN SENG & ORS. v. PUBLIC PROSECUTOR

[F.C. (Barakbah Ag.L.P., Ong & Gill JJ.) September 1, 1964]

[K.L. — Federal Court Criminal Appeal No. 29 of 1964]

Criminal Law — Kidnapping — Kidnapping Act, 1961, ss. 3, 10 and 15(1).

Evidence — Telephone conversation — Whether to or in the hearing of police officer not below rank of inspector — Admissibility — Kidnapping Act, 1961 s. 15(1) — Evidence Ordinance, 1950, s. 27

The first three appellants were convicted under section 3(1) of the Kidnapping Act for abducting a boy of nine, for ransom of $50,000 and the 4th appellant was convicted of abetting the others in the commission of the offence. They were all sentenced to imprisonment for life. On appeal against conviction and sentence it was contended *inter alia* that (i) the learned trial judge was wrong in law in admitting evidence of a telephone conversation between a police corporal and the 1st appellant, since such conversation was not to or in the hearing of a police officer not below the rank of an inspector as required by section 15(1) of the said Act (ii) that there was no evidence on record of any statement made by the first appellant which led to the discovery of the abducted boy, without which statement to serve as an explanation, the discovery was not necessarily an incriminating fact.

Held: (1) it was unnecessary to consider whether the telephone conversation was rendered inadmissible by section 15(1) of the Kidnapping Act because such evidence was admissible under section 27 of the Evidence Ordinance, the conversation being information in consequence of which a fact was discovered, namely, the identity of the 1st appellant;

(2) it was clear that the learned trial judge and the assessors were satisfied that the 1st appellant was able to lead the police party to the place where the boy was eventually found because in his conversation with the police corporal whom, he thought to be the boy's father, the 1st appellant had said "Your child is in my hands. I want $50,000 to release your child".

Cases referred to:—

(1) *Karuma* v. *The Queen* [1955] A.C. 197, 203; [1955] 1 All E.R. 236.

(2) *Das Ram Gehla Ram* v. *Emperor* (1941) 43 Cr. L.J. 268 at p. 274; A.I.R. 1941 Lah. 471.

(3) *In re Rangappa Goundan & Another.* [1935] 37 Cr. L.J. 471 at p. 473; A.I.R. 1936 Mad. 426; [1936] M.W.N. 110.

FEDERAL COURT.

Abdul Razak bin Abu Samah (Deputy Public Prosecutor) for the Public Prosecutor.

Balwant Singh for the 1st appellant.

D. R. Seenivasagam for the 2nd & 3rd appellants.

Saraswathi Devi (Miss) for the 4th appellant.

Cur. Adv. Vult.

Ong J.: In a trial before Ismail Khan J., with the aid of assessors, the first three appellants were convicted under section 3(1) of the Kidnapping Act, 1961, on a charge that they, in furtherance of a common intention to abduct one Ng Chee Theng, a boy of nine, for ransom of $50,000, did abduct this boy to a semi-jungle at the 4th mile Gemas-Tampin Road. The 4th appellant was convicted on a charge of abetting the others in the commission of the offence. They were all sentenced to imprisonment for life, which is mandatory as the only alternative to a sentence of death. They all appealed against both conviction and sentence, but the latter is, of course, not appealable. We dismissed the appeal of all the appellants and intimated that we would give our reasons later.

The facts were as follows. The boy is the son of a well-to-do merchant of Gemas. In the evening of December 21, 1963, he went out with an elder brother, twelve years old, for drinks at an ice-stall. The boys were well acquainted with the 4th appellant and he invited them to a treat of "buboh-kachang". They were afterwards joined by another friend. As a pretext to remove the elder brother and friend, the 4th appellant asked them to go to a shop to get him a calendar. In their absence this appellant then lured the boy Chee Theng to a back lane where he was snatched and carried away blind-folded into a motor-car waiting there for this purpose. He was taken to a piece of secondary jungle some 200 to 300 yards off the Gemas-Tampin Road at the 4th mile. For a day and two nights he remained there guarded by the 2nd and 3rd appellants. His blind-fold was removed on the following day, when he was able to see the faces of his two captors. That same day a third person who was masked arrived on the scene with provisions, and this man also interrogated the boy about his family and the telephone number of his house. On the night of his abduction, however, the boy had given his captors, as the telephone number of his house, that of a next-door neighbour instead. He was thus able to delay them in getting into touch with his father, and, in the event, such delay proved most valuable in leading to their capture. The number he gave was Gemas 273; his own actually was Gemas 271.

Around mid-night an anonymous caller telephoned to the neighbour that he was a Singaporean who had kidnapped the listener's son. The caller said that he would ring up again the following day. Chee Theng's father discovered on the following morning that his son was missing and he reported to the police. He had also heard from his neighbour about the telephone conversation. The police then arranged for incoming calls to Gemas 271 to be diverted to Tampin police station, in order that the source of any call by the kidnappers could promptly be traced.

At about 8.15 p.m. on December 22, 1963, a call for Gemas 271 was made from the telephone booth outside the General Hospital, Seremban. A Chinese police corporal (P.W.8) took the call, pretending to be the father of the boy, and he was told that the caller would release the boy for a ransom of $50,000 to be brought to a place along the Seremban-Tampin Road. At the same time that this call came in, Inspector Abdul Mutalib, who was then in Seremban, happened to be speaking over the telephone to Gemas. His conversation was interrupted and a message passed to him. As a result he dashed off immediately in his car to the Seremban Hospital and there apprehended the 1st appellant who was just coming out from the telephone booth.

After police interrogation the 1st appellant led the police party to the 4th mile, Gemas-Tampin Road. It was too dark then to search the jungle and action was postponed till dawn. When the area was combed the boy was found in the company of two men, one of whom was caught but the other managed to escape. The man detained was the 2nd appellant. The other who escaped was the 3rd appellant; he was arrested 8 days later. Both the 2nd and 3rd appellants were readily identified by the boy in separate identification parades.

The main ground of appeal raised by Mr. Balwant Singh, counsel for the 1st appellant, was that the learned trial judge was wrong in law in admitting evidence of the telephone conversation between the police corporal and the caller from the telephone booth, since such conversation was not to or in the hearing of a police officer

not below the rank of an Inspector, as required by section 15(1) of the Kidnapping Act. Two other subsidiary grounds of appeal were (a) that there was no evidence on record of any statement made by the 1st appellant which led to the discovery of the abducted boy, without which statement to serve as an explanation, the discovery was not necessarily an incriminating fact, and (b) that the conviction was against the weight of evidence.

We shall deal with the three grounds of appeal in turn. Section 15(1) of the Act reads as follows:

"15. (1) Where any person is charged with an offence under this Act any statement, whether such statement amounts to a confession or not or is oral or in writing, made at any time; whether before or after such person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by such person to or in the hearing of any police officer not below the rank of Inspector, whether or not interpreted to him by any police officer or any other person concerned or not in the arrest, shall be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit."

In our view, it is unnecessary to consider whether the telephone conversation was rendered inadmissible by section 15(1). It is sufficient to say that such evidence was admissible under section 27 of the Evidence Ordinance which reads:

"When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether such information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

The conversation was precisely information, in consequence of which a fact was discovered, namely, the identity of the 1st appellant, and as such, the conversation clearly was admissible evidence. If information received from an accused person, even while in the custody of a police officer, is admissible under section 27 of the Evidence Ordinance, *a fortiori* it ought to be admissible when given by an accused person before being taken into such custody.

In this connection it was further argued that evidence of the telephone conversation was inadmissible by reason of the fact that interception of the message had been made without authority of the Public Prosecutor, in contravention of section 10 of the Kidnapping Act. The answer to this objection may be found in the well-known case of *Kuruma* v. *The Queen*.[1] There the appellant had been sentenced to death by an Emergency Court of Assizes at Nairobi in Kenya for being in unlawful possession of ammunition, contrary to section 8A(1) of the Emergency Regulations, 1952, of Kenya. Evidence of the search and finding of ammunition on the appellant was given at the trial by two police officers who, not being of or above the rank of assistant inspector, had no power to search the appellant by virtue of regulation 29 of the Emergency Regulations. The ground on which leave to appeal to the Privy Council had been obtained was that the evidence proving the appellant to have been in possession of the ammunition, had been illegally obtained and, therefore should not have been admitted. Their Lordships, however, held that "the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how the evidence was obtained."

For his second ground of appeal Mr. Balwant Singh has referred us to the following passage in the judgment of Din Mohammad J. in *Das Ram Gehla Ram* v. *Emperor* [2]:

"As remarked by a Division Bench composed of Chevis and Shadi Lal JJ. in *Emperor* v. *Buta Singh*, the mere fact that a person points out a place where stolen property is concealed, if that place is not his own, does not justify the Court in drawing the conclusion that the person who pointed out the stolen article had received or retained it, nor does the mere knowledge of the place of concealment necessarily lead to the conclusion that the person having such knowledge participated in the act of concealment."

Another authority cited was *In re Rangappa Goundan and Another*,[3] where it was said:

"The stick and the spear, which was the deceased man's weapon, had been concealed in manure heaps. This is the strongest piece of evidence in the case against the accused. Unfortunately, there is no evidence of the statement made by the accused which led to the discovery of these things. All that the Inspector says is: 'At 7 p.m. after both accused had made a statement to me, they took me to Karunnaipallien.' Anything said by the accused to the police officer which led to the discovery of these things would have been admissible and might have been of the greatest importance. But we have not got it. We think that the discovery of these articles of the accused raises a grave suspicion against the accused. But suspicion will not justify a conviction, and, as we have already indicated, the other evidence in the case is not, in our judgment, sufficient to support the conviction."

We did not think there was any substance in this ground of appeal because it was clear that the learned trial judge, as well as the assessors, were satisfied that the 1st appellant was able to lead the police party to the place where the boy was eventually found, because he had, in his telephone conversation, told the police corporal whom he thought to be the boy's father: "Your child is in my hands. I want $50,000 to release your child". This statement fully explained how and why he was able to lead the police to the piece of jungle where the boy had been hidden. In our opinion, the evidence against the 1st appellant abundantly established his guilt beyond reasonable doubt, and so we dismissed his appeal and affirmed his conviction.

Mr. Seenivasagam, counsel for the 2nd and 3rd appellants, adopted the arguments of Mr.

Balwant Singh with regard to section 15(1). In addition he submitted that the directions of the learned trial judge as to corroboration were inadequate. We have perused the summing-up by the judge with the greatest care and in our opinion, his directions were impeccable. In any event, the evidence against them was overwhelming, apart from their own admissions which helped them not at all. Their appeals were accordingly dismissed and the conviction affirmed.

As to the last appellant, Miss Saraswathi Devi argued that, at most, the prosecution evidence only raised suspicion against this appellant, which was insufficient to warrant a conviction. We were satisfied that there was no substance in this submission. What we considered the most damaging evidence against this appellant was that, when the elder brother returned and found Chee Theng missing, the appellant invented a false reason for the boy's disappearance. We considered his guilt also established beyond reasonable doubt and therefore dismissed his appeal and affirmed the conviction.

In conclusion, we feel that we should highly commend the police officers concerned for a very smart and efficient piece of work which compels admiration.

Appeals dismissed.

Solicitors: *Balwant Singh & Co.; S. Seenivasagam & Sons; Kamala Devi & Co.*

PHANG SWEE KIM v. BEH I HOCK

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) September 1, 1964]

[Ipoh — Federal Court Civil Appeal No. 32 of 1964]

Land Laws — Sale — Memorandum of transfer made during Japanese occupation not registered — Death of purchaser — Widow remaining in possession as administratrix — Subsequent agreement by vendor to effect transfer after subdivision for consideration — Whether consideration adequate — Failure to transfer — Whether administratrix entitled to declaration.

Contract — Consideration — Adequacy of — Contracts (Malay States) Ordinance, 1950, ss. 2(d) and 26 Explanation 2.

In 1944 by a memorandum of transfer and in consideration of $20,000 in Japanese currency, the respondent transferred his half share of the land in question to the appellant's husband, now deceased. The transfer was not registered but the deceased obtained possession of the land, and in 1946 he died intestate. The appellant, the widow of the deceased extracted grant of letters of administration in 1951 and she continued to be in possession. Sometime in 1963 the land was sub-divided into two lots and the respondent became the sole proprietor of the lot occupied by the appellant. Subsequently on January 21, 1963 the respondent's solicitors notified the appellant that she had trespassed on the said land and asked for vacant possession and also for an account of all income received by her from the land. In May 1963 the respondent instituted an action against her claiming the relief stated. The appellant counterclaimed for a declaration that she was entitled to the said land.

At the hearing in the court below the appellant contended that the basis of her claim was an oral agreement made between her and the respondant in 1958. The learned trial judge accepted her evidence, but held that the agreement was void due to inadequacy of consideration. The appellant appealed and the respondent cross-appealed.

Held: there was adequate consideration in the case (there being no evidence of fraud or duress) because the respondent agreed to transfer the land to the appellant on payment of $500 when the land was sub-divided. The appellant was therefore entitled to the declaration sought by her.

Cases referred to:—

(1) *Robertson* v. *Minister of Pensions* [1949] 1 K.B. 227.

(2) *The Alliance Bank Ltd.* v. *Broom* 62 E.R. 631.

(3) *Kedari Bin Ranu* v. *Atmarambhat* (1866) B.H.C.A.C. 11, 18, 19.

FEDERAL COURT.

P. P. Dharmananda for the appellant.

E. K. Yeap (Miss Yeap with him) for the respondent.

Cur. Adv. Vult.

Barakbah C.J. (Malaya): The defendant, who is the appellant in this appeal, is the administratrix of the estate of her husband, Khoo Hock Lim, deceased. She alleged that prior to his death he obtained possession of part of a piece of land held under Grant for Land No: 18534 for Lots Nos: 3486, 3491 and 3492 in the Mukim of Lumut, District of Dindings, from the plaintiff, now the respondent. This said land was registered in the names of the respondent and his brother, Beh I Siew, in equal undivided shares. By a memorandum of transfer executed on the 20th of December, 1944, that is during the Japanese occupation, in consideration of the sum of $20,000 in Japanese currency the respondent transferred his interest in the said land to the appellant's husband, Khoo Hock Lim, who died intestate on the 13th of February, 1946, without registering the transfer in the Land Office. The appellant extracted grant of letters of administration on 22nd of December, 1951. The appellant continued in possession of the said land.

Some time in 1963, the land was sub-divided and Certificates of Titles Nos: 22367 and 22368 for Lots 4011 and 4022 were issued in place of the old title. The respondent then became the sole proprietor of the land under Certificate of Title No: 22367 Lot No: 4011. The appellant continued in possession of this portion of the land under Certificate of Title No: 22367 until receipt of a letter from the respondent's solicitors dated the 21st of January, 1963, notifying her that she had trespassed on the land and asking for vacant possession and also for an account of all income received by her from the land. In